

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION  
2:14-cv-38-FDW**

<b>ROCKY JOHNSON,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	<b><u>ORDER</u></b>
<b>EVA FIELDS, Nurse, et al.,</b>	)	
	)	
	)	
<b>Defendants.</b>	)	
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**THIS MATTER** comes before the Court on remand from the Fourth Circuit Court of Appeals.

Pro se Plaintiff Rocky Johnson is a pre-trial detainee currently incarcerated at the Cherokee County Detention Center in Murphy, North Carolina. Plaintiff filed this action on August 25, 2014, pursuant to 42 U.S.C. § 1983. Plaintiff's claims arise out of events that allegedly occurred while he was a pre-trial detainee at the Buncombe County Detention Center ("BCDC") in Asheville, North Carolina. Plaintiff named as Defendants eleven individuals, including various nurses, health care staff, detention officers, and administrative staff at the BCDC. (Doc. No. 1 at 3). Plaintiff alleged that while he was incarcerated at the BCDC he was subjected to numerous federal constitutional violations, including excessive force, deliberate indifference to serious medical needs, denial of his right to exercise his religion ("Bible claim"), cruel and unusual punishment based on unsanitary conditions ("shower claim"), denial of his "First Amendment" right to "send and receive letters" ("correspondence claim"), and denial of his right to due process during disciplinary proceedings. See (Doc. No. 1-2 at 1-7).

In an order dated November 14, 2014, following an initial review, this Court dismissed for failure to exhaust administrative remedies all of Plaintiff's claims except for Plaintiff's claim against Defendant Nurse Diane Ray based on Defendant Ray's alleged denial to provide medical treatment to Plaintiff in June 2013. The Court found that, as to that claim, Plaintiff failed to state a claim for deliberate indifference to serious medical needs, and the Court dismissed the deliberate indifference claim with prejudice for failure to state a claim.

Plaintiff appealed and on June 30, 2015, the Fourth Circuit Court of Appeals vacated this Court's judgment and remanded to this Court for further proceedings. Johnson v. Fields, No. 14-7814, 2015 WL 3958496 (4th Cir. June 30, 2015). The Fourth Circuit stated in its order that it was reversing this Court's judgment dismissing without prejudice Plaintiff's Bible and correspondence claims against Defendants Allen and Bishop and Plaintiff's shower claim against Defendants Allen, Bishop, and Gould. Id. at \*2. The Fourth Circuit further stated in its order that it was vacating this Court's judgment dismissing with prejudice Plaintiff's claim of deliberate indifference to serious medical needs against Defendants Salyers and Diane Ray. Id. Finally, the Fourth Circuit stated in its order that it was affirming this Court's dismissal without prejudice of the remaining claims and Defendants. Id.

In accordance with the Fourth Circuit's order, this Court first finds that Plaintiff's Bible and correspondence claims against Defendants Allen and Bishop and Plaintiff's shower claim against Defendants Allen, Bishop, and Gould are not clearly frivolous. Therefore, the Court finds that these claims survive initial review.<sup>1</sup> This Court will, therefore, instruct the Clerk of

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<sup>1</sup> Since exhaustion is an affirmative defense, the Court will allow Defendants to raise the exhaustion issue in future pleadings if they so choose, but the Court will decline from delving further into the exhaustion issue at this point in the proceedings.

this Court to mail summons to Plaintiff to fill out for these Defendants. Furthermore, in accordance with the Fourth Circuit's order vacating this Court's dismissal of Plaintiff's deliberate indifference claim, the Court will instruct the Clerk to mail summons forms to Plaintiff to fill out for Defendants Salyers and Diane Ray.

**IT IS THEREFORE ORDERED** that

- (1) The Clerk is directed to mail five summons forms to Plaintiff for Plaintiff to fill out and return for service of process on Defendants Allen, Bishop, Gould, Salyers, and Diane Ray. Once the Court receives the summons forms, the Clerk shall then direct the U.S. Marshal to effectuate service on Defendants.

Signed: July 24, 2015

  
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Frank D. Whitney  
Chief United States District Judge

